

A Faber Union Sdn Bhd v Chew Nyat Shong & Anor

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 04-15-1993
EUSOFF CHIN CHIEF JUSTICE, EDGAR JOSEPH JR AND MOHAMED
DZAIDIN FCJJ

B 4 JULY 1995

Contract — Damages — Sale and purchase of property — Late delivery — Developer to deliver vacant possession within 36 months from date of agreement — Purchaser claiming liquidated damages — Calculation of damages — Whether time starts to run from date of paying booking fee or signing of agreement

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The respondent ('the purchaser') in this case bought a unit of property from the appellant ('the developer'). A booking fee was paid by the purchaser, and the sale and purchase agreement ('the agreement') was signed a few months later. In the agreement, it was provided that the vacant possession of the property should be delivered to the purchaser within 36 calendar months from the date of the agreement, or the developer would pay to the purchaser liquidated damages to be calculated from day to day at a prescribed rate. The developer later failed to complete the property within the stipulated time, and the purchaser sued for liquidated damages. The issue before the court was, for the purpose of ascertaining the date of delivery of the vacant possession in a claim for liquidated damages, whether time started running from the date of payment of the booking fee, or the date of the signing of the agreement.

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Held, dismissing the appeal:

For the purpose of ascertaining the date of delivery of vacant possession, the relevant date when time started to run was the date on which the purchaser paid the booking fee, and not the date of the signing of the sale and purchase agreement.

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[Bahasa Malaysia summary]

Responden ('pembeli') dalam kes ini telah membeli seunit hartanah daripada perayu ('pemaju'). Suatu fee tempahan telah dibayar oleh pembeli dan perjanjian jual beli ('perjanjian tersebut') telah ditandatangani beberapa bulan kemudian. Dalam perjanjian tersebut, adalah diperuntukkan bahawa milikan kosong hartanah itu patut dihantar serah kepada pembeli dalam tempoh masa 36 bulan kalendar dari tarikh perjanjian tersebut, dan sekiranya tidak, pemaju akan membayar kepada pembeli ganti rugi jumlah tertentu yang akan dikira dari hari ke sehari pada kadar yang ditentukan. Pemaju tersebut kemudiannya gagal menyiapkan hartanah tersebut dalam tempoh masa itu, dan pembeli pun menuntut untuk ganti rugi jumlah tertentu. Isu yang harus dipertimbangkan oleh mahkamah ialah, bagi tujuan penentuan tarikh penghantarserahan milikan kosong dalam suatu

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tuntutan ganti rugi jumlah tertentu, sama ada masa bermula dari tarikh pembayaran fee tempahan, atau tarikh perjanjian tersebut ditandatangani. A

Diputuskan, menolak rayuan itu:

Bagi tujuan penentuan tarikh penghantarserahan milikan kosong, tarikh yang relevan apabila masa bermula ialah tarikh apabila pembeli membayar fee tempahan dan bukan tarikh perjanjian jual beli ditandatangani.] B

Notes

For cases on damages for breach of contract for the sale of property, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1485–1487. C

Case referred to

Hoo See Sen & Anor v Public Bank Bhd [1988] 2 MLJ 170 (folld) D

Lam Nai Jit (Jeyaratnam & Chong) for the appellant.

Fiona Mohd Ghaus (Chong Yik Son & Fiona Ghaus) for the respondent.

Cur Adv Vult

Eusoff Chin Chief Justice (delivering the decision of the court): When this appeal came before us on 6 January 1995, only one issue was argued and that is, for the purpose of ascertaining the date of delivery of the vacant possession in a claim of liquidated damages for late delivery of a building to be constructed, does time start running from the date of payment of the booking fee, or the date of the signing of the sale and purchase agreement, which was executed after the payment of the booking fee. E F

The date the deposit was paid was 17 February 1984, and the agreement was signed on 27 June 1984.

Learned counsel for the respondent told us that there was already a Supreme Court decision on this point, but could not produce to us a copy of the judgment. We then adjourned the case for decision pending the production of the earlier Supreme Court judgment. G

The learned counsel for the respondent has sent us the case which is *Hoo See Sen & Anor v Public Bank Bhd* [1988] 2 MLJ 170. The facts there are similar to the ones before us. Clause 18 of the sale & purchase agreement in *Hoo See Sen* reads as follows: H

- (1) The said building shall be completed by the vendor and vacant possession delivered to the purchaser within twenty-four (24) calendar months from the date of this agreement. I
- (2) If the vendor fails to deliver vacant possession of the said building in time the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.

- A At p 171, it was held that for the purpose of ascertaining the date of delivery of vacant possession, the relevant date when time starts to run is the date on which the purchaser paid the booking fee, and not the date of the signing of the sale and purchase agreement.

- B Similarly, in the instant case, cl 6.06 of the sale and purchase agreement reads:

- C The premises shall be completed by the vendor and vacant possession delivered to the purchaser within thirty-six (36) calendar months *from the date of this agreement*. If the vendor fails to deliver vacant possession of the premises on time the vendor shall pay to the purchaser liquidated damages to be calculated from day to day at the rate of eight per cent (8%) per annum of the purchase price.

We find no good reason to disagree with the earlier decision of the Supreme Court.

We therefore dismiss this appeal with costs.

- D *Appeal dismissed.*

Reported by Prof Ahmad Ibrahim

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